

DRUGS FOR VETERINARY USE

1248. Misbranding of medicated charcoal. U. S. v. Des Moines Incubator Co. Plea of guilty. Fine, \$200 and costs. (F. D. C. No. 11342. Sample No. 3168-F.)

On February 2, 1944, the United States attorney for the Southern District of Iowa filed an information against the Des Moines Incubator Co., a corporation, Des Moines, Iowa, alleging shipment of a quantity of medicated charcoal on or about March 5, 1943, from the State of Iowa into the State of Nebraska.

Analysis disclosed that the article consisted essentially of charcoal impregnated with mineral salts, including small proportions of silica, calcium carbonate, and magnesium sulfate.

The article was alleged to be misbranded (1) in that the statements in its labeling which represented and suggested that the article contained menthol, methyl salicylate, and thymol, and that it contained Glauber's salt and Epsom salt in amounts sufficient to be of therapeutic importance, were false and misleading since the article did not contain menthol, methyl salicylate, or thymol, and it did not contain Glauber's salt or Epsom salt in amounts sufficient to be of therapeutic importance, but contained only insignificant amounts of Glauber's salt and Epsom salt; (2) in that the statements in its labeling, "To prevent and correct White Diarrhoea and all other forms of digestive disturbances in Chicks and Fowls * * * Guaranteed under the Food and Drugs Act June 30th 1906. Serial 13014," were false and misleading since the article would not be efficacious to prevent or correct white diarrhea or all other forms of digestive disturbances in chicks or fowls, and it had not been approved by the United States Government, and did not comply with all Federal laws relating to drugs; (3) in that the statement in its labeling, "Net Weight 5 Lbs.," was false and misleading since the cartons containing the article contained a smaller amount; and (4) in that it was in package form and its label did not bear an accurate statement of the quantity of the contents. It was alleged to be misbranded further because of false and misleading statements appearing in its labeling which represented and suggested that the article would be efficacious in the cure, mitigation, treatment, or prevention of intestinal disturbances in chicks and fowls, and cholera, white diarrhea, or other forms of intestinal complaints in chicks or fowls; that it would be efficacious to keep chicks in the best of condition and to bring relief in intestinal or bowel complaints in 24 hours; and that it would insure healthy chicks, growing stock, and matured fowls.

On May 13, 1944, a plea of guilty was entered on behalf of the defendant, and the court imposed a fine of \$200 and costs.

1249. Misbranding of Es-A-Deen. U. S. v. Hugo Heinrich Julius Schaefer (American Research Laboratories and Schaefer Biological Laboratories). Plea of nolo contendere. Fine, \$200. (F. D. C. No. 10610. Sample Nos. 5878-F, 6090-F.)

On December 10, 1943, the United States attorney for the Eastern District of Missouri filed an information against Hugo Heinrich Julius Schaefer, an individual trading as the American Research Laboratories and as the Schaefer Biological Laboratories, St. Louis, Mo., alleging shipment, from on or about December 13, 1942, to January 24, 1943, from the State of Missouri into the States of Tennessee and Illinois of quantities of Es-A-Deen.

Analysis disclosed that the article consisted essentially of water, small proportions of sodium sulfocarbolate, zinc sulfocarbolate, calcium sulfocarbolate, and acriflavine hydrochloride, and that it contained no bismuth carbolate or arecaline hydrobromide.

The article was alleged to be misbranded because of false and misleading statements appearing in its labeling which represented and suggested that it would be efficacious in the cure, mitigation, treatment, or prevention of colic, coccidiosis, black head, white diarrhea, and roundworms in poultry; that it would be an efficacious treatment for droopy chicks; and that, when inserted twice daily with a syringe into the crops of poultry that could not eat or drink, it would be efficacious in the cure, mitigation, and treatment of droopy chicks and the other above-mentioned conditions. It was alleged to be further misbranded in that the statements "Arecoline Hydrobromide 0.7%, Bismuth Carbolate 2.0%," appearing on its labels, were false and misleading since the article contained no arecaline hydrobromide or bismuth carbolate.

On April 3, 1944, a motion to strike was submitted to the court by the defendant and, after argument by counsel, the court, on April 4, 1944, overruled the motion, handing down the following opinion:

HULEN, *District Judge*: "Defendant files his motion to strike the affidavit attached to the information filed in this case. The Information, charging misdemeanor, was filed by the District Attorney by leave of Court. The Information is signed by the District Attorney. Attached to the Information is an affidavit of one Henry E. Moskey, a veterinarian connected with the Food & Drug Administration of the United States Government. The Information in two counts charges misbranding of a medicine represented as a preventive of certain poultry diseases. The affidavit purports to state facts showing probable cause. Defendant's Motion to Strike the Affidavit from the Information and from the files in this cause alleges grounds therefor:

"(1) That the affidavit constitutes hearsay evidence and is not legally part of the information:

"(2) That the affidavit could be read to the jury and thereby deprive defendant of his right to cross-examine affiant:

"(3) That the affidavit is hearsay:

"(4) That the affidavit is self-serving:

"(5) That the affidavit is unwarranted in law and is prejudicial.

"It would appear from defendant's motion that he has misconstrued the purpose served by the affidavit attached to the Information. See *Dinger v. United States*, 28 F. (2d) 548 (8th Circuit).

"We make the observation that in our judgment the affidavit is no part of the Information; is not evidence hearsay or otherwise; should not be read to the jury in a trial of the cause, and therefore, without holding that the affidavit is improperly filed, we do find that the affidavit cannot prejudice the defendant in any of the particulars set forth in Motion to Strike.

"Defendant's Motion to Strike is overruled."

On June 5, 1944, the defendant entered a plea of nolo contendere and the court imposed a fine of \$100 on each count, a total fine of \$200.

1250. Misbranding of veterinary products. U. S. v. 276 Bags of Economy Stock Powder, 85 Bags of Economy Mineral Compound, 8 Bags of Economy Horse Powders, 1 Bag of Economy Drenching Powder, and various quantities of printed matter. Consent decree of condemnation. Products ordered released under bond; printed matter ordered destroyed. (F. D. C. No. 10180. Sample Nos. 37973-F to 37975-F, incl., 37977-F.)

On July 12, 1943, the United States attorney for the Northern District of Indiana filed a libel against the following articles and printed matter at Fort Wayne, Ind.: 276 50-pound bags of Economy Stock Powder, 85 100-pound bags of Economy Mineral Compound, 8 25-pound bags of Economy Horse Powders, 1 25-pound bag of Economy Drenching Powder, 3,000 booklets entitled "The Key to Success Economy Stock Powder," 450 circulars entitled "Directions for Feeding Economy Stock Powders," 300 circulars entitled "Economy Mineral Compound," 100 circulars entitled "Economy Horse Powder," and 50 leaflets entitled "Directions for Using Economy Drenching Powder." It was alleged that the articles had been shipped from Shenandoah, Iowa, by the Economy Hog & Cattle Powder Co., on or about March 3, 1942, and January 4, 1943. The Stock Powder was labeled in part: "Manufactured by James J. Doty, Ltd. Shenandoah, Iowa"; and the other articles were labeled in part: "Manufactured by the Economy Hog & Cattle Powder Co. Shenandoah, Iowa."

Analysis disclosed that the Stock Powder consisted essentially of sodium sulfate, calcium carbonate, sodium bicarbonate, sulfur, charcoal, small amounts of iron oxide, manganese sulfate, sodium thiosulfate, plant drugs including American wormseed, and not more than 0.004 percent of iodine; that the Mineral Compound consisted essentially of calcium carbonate, sodium sulfate, small amounts of sodium bicarbonate, charcoal, sulfur, iron oxide and manganese sulfate with traces of an iodide, a phosphate, anise, and molasses, and contained not more than 0.4 percent of phosphorus and not more than 0.009 percent of iodine; that the Horse Powders consisted essentially of sodium sulfate, sodium bicarbonate, sodium carbonate, sulfur (3.3 percent), charcoal (3.7 percent), small amounts of manganese sulfate, sodium thiosulfate, potassium iodide, and plant drugs including American wormseed, and contained not more than 0.006 percent of iodine; and that the Drenching Powder consisted essentially of sodium sulfate, sodium bicarbonate, charcoal, sulfur, calcium carbonate, and a laxative plant drug.

The articles were alleged to be misbranded because of false and misleading statements in their labeling, i. e., in the aforesaid printed matter, which represented, suggested, and created the impression, (1) in the case of the Stock Powder, that it would be efficacious in the treatment of worms, thumps, lung trouble, cough, white scours in pigs, necro, gastritis, enteritis, spasmodic colic, and bad stomach; that it was a laxative; that it was a regulator and corrective for all